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FORM PTO-1083

SEP 14 2005

Attorney Docket No.: 101.0042-05000  
Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary Karlin Michelson, M.D.

Serial No: 10/098,683

Filed: March 15, 2002

For: SPINAL IMPLANT CONTAINING  
BONE MORPHOGENETIC PROTEIN

Confirmation No.: 7210

Art Unit: 3731

Examiner: Uyen T. Ho

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a reply to the Office Action of April 12, 2005 in the above-identified application.

- ☐ No additional fee is required.
- ☒ Applicant hereby requests a three-month extension of time to respond to the above Office Action.
- ☒ A fee in the total amount of \$1,020.00 to cover the three-month extension of time fee is to be charged to Deposit Account No. 50-1068.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

09/15/2005 HGUENAI 00000047 501068 10098683

01 FC:1253 1.00 DA

Respectfully submitted,  
MARTIN & FERRARO, LLP

Date: September 14, 2005

By:   
Thomas H. Martin  
Registration No. 34,3831557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: 330-877-0700  
Facsimile: 330-877-2030RECEIVED  
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SEP 15 2005

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**MARTIN & FERRARO, LLP**  
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**FACSIMILE TRANSMITTAL**

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**TO:****Name:** Mail Stop AMENDMENT  
Group Art Unit 3731/Examiner Uyen Ho**Firm:** U.S. Patent & Trademark Office**Fax No.:** 571-273-4702**Subject:** U.S. Patent Application No. 10/098,683

Gary Karlin Michelson

Filed: March 15, 2002

SPINAL IMPLANT CONTAINING BONE  
MORPHOGENETIC PROTEIN

Attorney Docket No. 101.0042-05000

Customer No. 22882

Confirmation No.: 7210

**FROM:****Name:** Thomas H. Martin, Esq.**Phone No.:** 330-877-2277**No. of Pages (including this):** 5**Date:** September 14, 2005**Confirmation Copy to Follow:** NO

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**Message:****CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Transmittal Form (in duplicate; \$1,020.00 total amount to cover the three-month extension fee is to be charged to Deposit Account No. 50-1068) and Reply to Office Action are being facsimile transmitted to the U.S. Patent and Trademark Office on September 14, 2005.



Sandra L. Blackmon

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

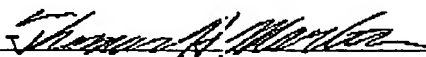
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PROTEIN	)	

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE ACTION**

In reply to the Office Action dated April 12, 2005, the period for reply having been extended for three (3) months by a request for extension and fee payment filed concurrently herewith, the following remarks are submitted.

In the Office Action, the Examiner rejected claims 54-103 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,026,373 to Ray et al. ("Ray"). Independent claim 54 recites an implant with a trailing end having a rear wall between the upper and lower portions, "said rear wall being integrally formed with said upper and lower portions of said implant." Ray teaches a fusion cage 10 that is adapted to "threadably receive an end cap 16." (Ray, col. 7, lines 24-27; Fig. 1). Ray does not teach or suggest an implant with a trailing end that is "integrally formed with said upper and lower portions of said implant" as recited in independent claim 54.

Independent claim 79 recites that the trailing end is "adapted so as to be connectable to another interbody spinal implant having a trailing end adapted to be connected to said interbody spinal fusion implant." The trailing end of the fusion cage taught by Ray is not adapted to be connected to another spinal implant as recited in independent claim 79 of Applicant's claimed invention. (See, e.g., Ray, Fig. 1).

Reply to Office Action 9-14-05.doc